

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**UNITED STATES DISTRICT COURT  
NEVADA DISTRICT COURT  
LAS VEGAS DIVISION**

HUGO RIQUELME,	)	Case No.:
	)	
Plaintiffs,	)	Complaint for Unlawful
	)	Debt Collection Practices
v.	)	
	)	
CAPITAL ONE BANK (USA), N.A.,	)	
	)	
Defendant.	)	
	)	

---

**COMPLAINT**

NOW COMES Plaintiff, HUGO RIQUELME (“Plaintiff”), through his attorney, and hereby alleges the following against Defendant, CAPITAL ONE BANK (USA), N.A. (“Defendant”):

**INTRODUCTION**

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter “TCPA”), 47 U.S.C. § 227 *et seq.*

**JURISDICTION AND VENUE**

2. Defendant conducts business in the state of Nevada and therefore personal jurisdiction is established.
3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, Mims v. Arrow Financial Services, LLC, 565 U.S. 368 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.

- 1 4. Venue is proper in the United States District Court for the District of Nevada pursuant to  
2 28 U.S.C § 1391(b)(2) because Plaintiff resides within this District and a substantial part  
3 of the events or omissions giving rise to the herein claims occurred, or a substantial part  
4 of property that is the subject of the action is situated within this District.

5 **PARTIES**

- 6 5. Plaintiff is a natural person residing in Clark County, in the city of Las Vegas, Nevada and  
7 is otherwise *sui juris*.  
8 6. Defendant is a Virginia Corporation doing business in the State of Nevada with its  
9 principal place of business located in McLean, Virginia.  
10 7. At all times relevant to this Complaint, Defendant has acted through its agents, employees,  
11 officers, members, directors, heir, successors, assigns, principals, trustees, sureties,  
12 subrogees, representatives and insurers.

13 **FACTUAL ALLEGATIONS**

- 14 8. Defendant is a “person” as defined by 47 U.S.C. § 153 (39).  
15 9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged  
16 debts owed by Plaintiff.  
17 10. Defendant placed collection calls to Plaintiff’s cellular telephone at phone number (702)  
18 624-38XX.  
19 11. Defendant places collection calls to Plaintiff from phone numbers including, but not  
20 limited to, (800) 955-6600.  
21 12. Per its prior business practices, Defendant’s calls were placed with an automated telephone  
22 dialing system (“auto-dialer”).  
23  
24  
25

1 13. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C.  
2 §227(a)(1) to place its telephone calls to Plaintiff seeking to collect a consumer debt  
3 allegedly owed by Plaintiff, HUGO RIQUELME.

4 14. Defendant’s calls constituted calls that were not for emergency purposes as defined by 47  
5 U.S.C. §227(b)(1)(A).

6 15. Defendant’s calls were placed to a telephone number assigned to a cellular telephone  
7 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §  
8 227(b)(1).

9 16. Defendant never received Plaintiff’s “prior express consent” to receive calls using an  
10 automatic telephone dialing system or an artificial prerecorded voice on his cellular  
11 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

12 17. On December 14, 2017, at or around 9:28 a.m. Pacific Standard Time, Plaintiff spoke with  
13 Defendant’s female representative at phone number (800) 955-6600 and requested that  
14 Defendant cease calling Plaintiff’s cellular phone.

15 18. During the conversation, Plaintiff gave Defendant his name, social security number, date  
16 of birth, address, and telephone number to assist Defendant in accessing his accounts  
17 before asking Defendant to stop calling his cell phone regarding all of his accounts.  
18

19 19. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his cellular telephone  
20 and/or to receive Defendant’s calls using an automatic telephone dialing system in his  
21 conversation with Defendant’s representative December 14, 2017.

22 20. Despite Plaintiff’s request to cease, Defendant continued to place collection calls to  
23 Plaintiff through May 5, 2018.  
24  
25

21. Despite Plaintiff's request that Defendant cease placing automated collection calls, Defendant placed at least Ninety-Three (93) automated calls to Plaintiff's cell phone.

**FIRST CAUSE OF ACTION**  
**NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**  
**47 U.S.C. § 227**

22. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-21.

23. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

24. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

25. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**  
**KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER**  
**PROTECTION ACT**  
**47 U.S.C. § 227 et. seq.**

26. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-21.

27. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

28. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, HUGO RIQUELME, respectfully requests judgment be entered against Defendant, CAPITAL ONE BANK (U.S.A.), N.A., for the following:

**FIRST CAUSE OF ACTION**

30. For statutory damages of \$500.00 multiplied by the number of negligent violations of the TCPA alleged herein (93); \$46,500.00;

31. Actual damages and compensatory damages according to proof at time of trial;

**SECOND CAUSE OF ACTION**

32. For statutory damages of \$1,500.00 multiplied by the number of knowing and/or willful violations of TCPA alleged herein (93); 139,500.00;

33. Actual damages and compensatory damages according to proof at time of trial;

**ON ALL CAUSES OF ACTION**

34. Litigation costs and reasonable attorneys' fees;

35. Any other relief that this Honorable Court deems appropriate.

**JURY TRIAL DEMAND**

36. Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED,

Dated: October 31, 2018

By: /s/ Mathew Higbee

**Mathew Higbee**

Bar #: 11158

2445 Fire Mesa Street, Suite 150

Las Vegas, NV 89128

Phone: 714-600-8085

Fax: 866-534-7049

Email: Mhigbee@higbeeassociates.com